

The Honorable Tana Lin

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

BOARD OF TRUSTEES OF THE  
EMPLOYEE PAINTERS' TRUST; BOARD  
OF TRUSTEES OF THE WESTERN  
WASHINGTON PAINTERS DEFINED  
CONTRIBUTION PENSION TRUST;  
BOARD OF TRUSTEES OF THE DISTRICT  
COUNCIL NO. 5 APPRENTICESHIP AND  
TRAINING TRUST FUND; BOARD OF  
TRUSTEES OF THE INTERNATIONAL  
PAINTERS AND ALLIED TRADES  
INDUSTRY PENSION FUND; BOARD OF  
TRUSTEES OF THE FINISHING TRADES  
INSTITUTE; THE PAINTERS AND ALLIED  
TRADES LABOR-MANAGEMENT  
COOPERATION INITIATIVE; WESTERN  
WASHINGTON SIGNATORY PAINTING  
EMPLOYERS ASSOCIATION;  
NORTHWEST WALL 7 CEILING  
CONTRACTORS ASSOCIATION;  
INTERNATIONAL UNION OF PAINTERS  
AND ALLIED TRADES DISTRICT  
COUNCIL NO. 5,

Plaintiffs,

v.

MARIN BROS., INC., an Illinois corporation;  
ABEL MARIN, an individual; JENNIFER  
GARCIA, an individual; DOES & ROES I-X,

Defendants.

Case No.: 2:23-cv-00483-TL

**SECOND STIPULATION AND ORDER  
TO STAY PROCEEDINGS**

**Noting Date: July 22, 2024**

1       The Plaintiffs, Board of Trustees of The Employee Painters' Trust, *et al.* (collectively  
 2 the "Plaintiffs"), and Defendants Marin Bros., Inc., Abel Marin, and Jennifer Garcia  
 3 (collectively the "Defendants") (Plaintiffs and Defendants are collectively referred to herein as  
 4 the "Parties"), each acting by and through their undersigned counsel, respectfully file this  
 5 Stipulation to Stay Proceedings. This Stipulation is the Parties' second request to stay the  
 6 proceedings and is made for cause and not for the purpose of delay. This Stipulation is made  
 7 with respect to the following:

8       1.       The Court issued an Order Setting Bench Trial Date and Related Dates on  
 9 October 27, 2023 [ECF No. 17]. The Court issued an Order granting the Parties' Stipulated  
 10 Motion to Extend Deadlines on February 5, 2024 [ECF No. 24]. The Court also issued an  
 11 Order to Stay Proceedings on May 7, 2024, staying the proceedings and all unexpired deadlines  
 12 to August 5, 2024 [ECF No. 28].

13       2.       This case centers on alleged fringe benefit payment obligations arising from  
 14 Collective Bargaining Agreements ("CBA") between the International Union of Painters and  
 15 Allied Trades District Council No. 5 ("Union") and Defendant Marin Bros., Inc. ("Marin  
 16 Bros").

17       3.       The Plaintiffs, as employee benefit trust funds governed by the Employee  
 18 Retirement Income Security Act ("ERISA"), have alleged the right to be paid certain fringe  
 19 benefit contributions and related damages for work performed by Marin Bros' employees  
 20 pursuant to the terms of the CBA.

21       4.       The Plaintiffs alleged in the Complaint [ECF No. 1] the right to perform a  
 22 payroll compliance review (audit) of Marin Bros' payroll and related records to determine the  
 23 extent of contributions of contributions owed to the Plaintiffs. *See Cent. States, Se. & Sw.*  
 24 *Areas Pension Fund v. Cent. Transp., Inc.*, 472 U.S. 559, 573-74 (1985) (discussing the role  
 25 of a payroll auditor in determining unpaid contributions).

26       5.       Since the filing of the Complaint and since the Court's Order to Stay

1 Proceedings, the parties continued to engage in diligent discovery, have worked together to  
2 avoid any court intervention of discovery issues, and have cooperated with sharing documents  
3 and information so that an audit of Marin Bros' records could be performed by a professional  
4 accounting firm engaged by the Plaintiffs.

5       6. The Plaintiffs' auditor issued a report for the period March 1, 2022 through  
6 December 31, 2022 ("First Audit Period"). Since the Court's Order to Stay Proceedings, the  
7 Plaintiffs' auditor completed a draft audit for the period of January 1, 2023 through September  
8 30, 2023 ("Second Audit Period").

9       7. Defendants engaged a separate professional accounting firm to conduct their  
10 own review of Marin Bros' payroll records, had issued its preliminary report regarding the  
11 First Audit Period, and reviewed the draft audit for the Second Audit Period. Defendants  
12 believe that this case involved potential mistakes in payments for benefits either (1) not owed  
13 to Plaintiffs or (2) covered in Plaintiffs' scope but accidentally paid to another entity. For  
14 Defendants' separate professional accounting firm to adequately assess and respond to  
15 Plaintiffs' draft audit of the Second Audit Period, Defendants require additional time to obtain  
16 and gather additional documents regarding its payroll and payment of benefits and for  
17 Defendants' separate professional accounting firm to review and prepare a report for the  
18 Second Audit Period.

19       8. The parties expect that they will soon have competing audit reports that will  
20 need to be reviewed and evaluated before discovery in this case can continue.

21       9. Additionally, the Parties intend to evaluate whether settlement discussions will  
22 be fruitful and hope to engage in meaningful settlement negotiations once final audit results  
23 are issued by each auditor. The Parties are committed to their ongoing obligation to explore  
24 settlement options in this case.

25       10. The Parties agree that a ninety (90) day stay of proceedings is warranted due to  
26 the need to complete the audits and to allow for discussion of the results of the audits and

1 potential settlement.

2 11. This Stipulation is made to avoid unnecessary expenditure of resources in  
3 litigation and is not intended to delay or for any improper purpose.

4 12. Accordingly, the Parties by and through their undersigned counsel, stipulate  
5 and agree, subject to the Court's approval, that these proceedings and all unexpired deadlines  
6 set forth in the Court's February 5, 2024 Order [ECF No. 24] shall be stayed an additional  
7 ninety (90) days from August 5, 2024.

8 13. No later than two weeks prior to the expiration of the stay, the Parties will meet  
9 and confer and file a joint status report to update the Court on the status of the audits,  
10 settlement, and, if not settled, a schedule for how the Parties intend to complete discovery.

11 DATED: July 22, 2024.

12 CHRISTENSEN JAMES & MARTIN

13 By: s/Wesley J. Smith, per email approval  
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20 **ORDER**

21 Good Cause Appearing, in accordance with the foregoing Stipulation, these proceedings  
22 and all unexpired deadlines set forth in the Court's February 5, 2024 Order [ECF No. 24] shall be  
23 stayed for an additional ninety (90) days from the date of entry of this Order. No later than two  
24 weeks prior to the expiration of the stay, the Parties will meet and confer and file a joint status report  
25

1 to update the Court on the status of the audits, settlement, and, if not settled, a schedule for how the  
2 Parties intend to complete discovery.

3 DATED this 23rd day of July, 2024.

4   
5

6 Tana Lin  
7 United States District Judge

8 Presented by:

9 BUCHALTER

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